

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

THE CALIFORNIA NAVIGATION AND IM-  
PROVEMENT COMPANY, a Corporation,  
Appellant,

vs.

AUGUST GENECCO,

Appellee.

Apostles.

Upon Appeal from the United States District Court  
for the Northern District of California,  
First Division.

FILED

MAR 27 1914



No. 2380

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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the  
Northern District of California, First Division.*

ADMIRALTY—No. 15,373.

ARTHUR GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT COMPANY, a Corporation,  
Respondent.

**Praeceptum for Apostles on Appeal.**

To the Clerk of the Above-entitled Court,—

Sir: Respondent herein having appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree of this Court entered herein in favor of libellant and against respondent, you are hereby requested to prepare and certify the apostles on appeal to be filed in said Appellate Court on or before the 18th day of February, 1914 (it having been ordered by the Court that appellant should have to and including said day within which time to procure to be filed in said Appellate Court the apostles certified by the Clerk of the District Court as in Rule 12 of the "Rules in Admiralty" of said Appellate Court provided); said apostles on appeal to be prepared in accordance with Rule 4 of said "Rules in Admiralty," except that all exhibits introduced in evidence at the hearing before the above Court shall be filed in the Appellate Court in their original forms and to include in their

proper order the following papers and documents,  
to wit: [1\*]

1. All the matters prescribed and mentioned in Admiralty Rule No. 4, Section No. 1, of said Appellate Court.

2. Libel of Arthur Genecco.

3. Answer to said Libel.

4. All of the testimony adduced at the hearing before said District Court.

5. Opinion and Decree of the District Court.

6. Notice of Appeal.

7. Stipulation and order extending time, filed January 19, 1914.

8. All the exhibits introduced in evidence at the hearing of said cause before the District Court, to be filed in their original forms.

9. Assignment of Errors.

Dated January 19th, 1914.

METSON, DREW & MacKENZIE,

Proctors for Appellant.

[Endorsed]: Filed Jan. 19, 1914. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [2]

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\*Page number appearing at foot of page of original certified Record.



**Statement of Clerk U. S. District Court.**

*In the District Court of the United States in and  
for the Northern District of California, First  
Division.*

No. 15,373.

AUGUST GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION AND IMPROVE-  
MENT COMPANY, a Corporation,  
Defendant.

**PARTIES.**

LIBELANT: August Genecco.

DEFENDANT: The California Navigation and Im-  
provement Company, a Corporation. [3]

**PROCTORS.**

For LIBELANT: H. W. Hutton, Esquire, San  
Francisco, California.

For DEFENDANT: Messrs. Metson, Drew and  
MacKenzie (R. G. Hudson, Esquire, appearing  
in the case), San Francisco, California.

1913.

February 4. Filed verified Libel, to recover  
damages. Issued Citation for the  
appearance of the California  
Navigation and Improvement  
Company, and which said Cita-  
tion was afterwards on the 24th  
day of February, 1913, returned

and filed without any return being made thereon.

February 25. Filed Exceptions of the California Navigation and Improvement Company to the Libel filed herein.

March 8. The Exceptions to the Libel, filed herein, this day came on for hearing, in the above-entitled Court, before the Honorable Wm. C. Van Fleet, Judge, and after argument by the Court Ordered said Exceptions overruled.

March 21. Filed Answer of the California Navigation and Improvement Company to the Libel. [4]

November 12. The above-entitled cause this day came on for hearing in the District Court of the United States for the Northern District of California, First Division thereof, in its courtroom, in the City and County of San Francisco, before the Honorable M. T. Dooling, Judge, and after the taking of testimony, etc., the matter was submitted to the Court for decision.

December 3. Filed Opinion, in favor of libelant in the sum of \$621.80, and costs.

December 15. Filed Decree.

December 20. Filed Notice of Appeal.

December 27. Filed Reporter's Transcript of Testimony, etc.

December 30. Filed Bond for Costs and Superse-  
deas, in the sum of \$1,750.00, with  
the Fidelity and Deposit Company  
of Maryland, as Surety.

1914.

January 24. Filed Assignment of Errors. [5]

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*In the District Court of the United States, in and for  
the Northern District of California, First  
Division.*

IN ADMIRALTY.

AUGUST GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION AND IMPROVE-  
MENT CO.,

Defendant.

**Libel for Wages.**

To the Honorable J. J. DE HAVEN, Judge of said  
Court:

The Libel of August Genecco, of said District, ves-  
sel owner and contractor, against California Naviga-  
tion and Improvement Co., a corporation, also of said  
District, ship owner and operator, in a cause of dam-  
ages, arising from collision, civil and maritime, al-  
leges as follows:

I.

That on all of the dates and times herein men-  
tioned, the defendant above named was and now is a  
corporation, organized and existing under and by

virtue of the laws of the State of California, and on all of said dates and times it was and now is the owner and operator of a certain American stern-wheel steam vessel, known and named as the "J. D. Peters."

## II.

That on all of said dates and times the libellant herein was and now is the owner of a certain gasoline launch, which said launch when in operating condition was of the value of one thousand (\$1,000.00) dollars, or thereabouts.

## III.

That on the 15th day of December, 1912, the said launch was lying securely tied to a barge called the "Stocktonia," which said barge was lying tied to a wharf on the banks of a slough, at the City of Stockton, in the County of San Joaquin, in the State of California, [6] the said slough being navigable waters of the United States of America, and of the State of California, at said time, and the said launch and barge being afloat on the said waters, when the defendant came up with the said steam vessel "J. D. Peters," and carelessly and negligently ran into the said launch, and with said steam vessel crushed and broke said launch, and so badly damaged the same that libellant has since been compelled to repair the same at an expense to him of the sum of \$400.00 dollars, and he has ever since lost the use of said launch, and will for a period of 15 days hereafter.

## IV.

That the said amount so expended by libellant for the repair of said launch was the reasonable cost

thereof, and the reasonable value of the use of said launch at said time was and is the sum of \$6.00 dollars per day, and by reason of the negligence of the defendant as aforesaid, libellant has been damaged in the aggregate of said sums.

V.

That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore libellant prays that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against the said California Navigation and Improvement Co., and that it may therein be cited to appear and answer under oath all and singular the premises aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages aforesaid with costs, and interest, and that libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

AUGUST GENECCO,

Libellant.

H. W. HUTTON,

Proctor for Libellant. [7]

United States of America,

Northern District of California,—ss.

August Genecco, being first duly sworn, deposes and says as follows:

I am the libellant above named; I have read the foregoing libel and I know the contents thereof, and the same is true of my own knowledge except as to the



matters therein stated on information and belief and as to those matters I believe it to be true.

AUGUST GENECCO.

Subscribed and sworn to before me this 16th day of January, 1913.

[Seal]

CHARLES DE LEGH,

Notary Public in and for the County of San Joaquin,  
State of California.

[Endorsed]: Filed Feb. 4, 1913. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [8]

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*In the District Court of the United States, in and for  
the Northern District of California, First  
Division.*

IN ADMIRALTY—No. 15,373.

AUGUST GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT CO.,

Defendant.

**Exceptions to Libel.**

**EXCEPTIONS OF DEFENDANT.**

To the Honorable Judge of the District Court of the  
United States, in and for the Northern District  
of California, First Division:

For exception of the California Navigation & Improvement Co., a corporation, defendant, the said defendant alleges that the said libel is informal and insufficient as follows:

### FIRST EXCEPTION.

That said alleged libel does not state facts sufficient to entitle the libellant to the relief therein demanded or to any relief.

### SECOND EXCEPTION.

That said alleged libel is uncertain in this: that the following particulars do not appear upon the face of said libel, neither can the same be ascertained therefrom, to wit:

(a) In what the alleged carelessness and negligence of the steamer "J. D. Peters" consisted. [9]

### THIRD EXCEPTION.

That said alleged libel is ambiguous in this: that the following particulars do not appear upon the face of said libel neither can the same be ascertained therefrom, to wit:

(a) In what the alleged carelessness and negligence of the steamer "J. D. Peters" consisted.

### FOURTH EXCEPTION.

That said alleged libel is unintelligible in this: that the following particulars do not appear upon the face of said libel neither can the same be ascertained therefrom, to wit:

(2) In what the alleged carelessness and negligence of the steamer "J. D. Peters" consisted.

WHEREFORE said defendant, California Navigation & Improvement Co., prays that the said libellant take nothing by virtue of this proceeding and

that the defendant be hence dismissed with its costs.

METSON, DREW & MacKENZIE,

Proctors for Defendant,

San Francisco, California.

Due service of a copy hereof admitted February 25, 1913.

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Proctor for Libellant.

[Endorsed]: Filed Feb. 25, 1913. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [10]

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**[Order Overruling Exceptions to Libel, etc.]**

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the courtroom thereof, in the City and County of San Francisco, on Saturday, the 8th day of March, in the year of our Lord One Thousand Nine Hundred and Thirteen. Present: The Honorable WM. C. VAN FLEET, Judge.

#15,373.

GENECCO

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT CO.

The exceptions to the libel herein this day came on for hearing, and after hearing proctors, by the Court ordered that said exceptions be, and the same are hereby overruled, and respondent granted ten days to answer the libel herein. [11]



*In the District Court of the United States, Northern  
District of California, First Division.*

AUGUST GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT COMPANY, a Corporation,

Defendant.

**Answer to Libel.**

To the Honorable Judge of the District Court of the  
United States for the Northern District of Cali-  
fornia, First Division.

The California Navigation & Improvement Com-  
pany, a Corporation, for its answer to the libel in  
the above-entitled proceeding answers and alleges as  
follows:

I.

Admits the allegation of paragraph I of said libel.

II.

Answering paragraph II of said libel this defend-  
ant alleges that it has no information or belief as to  
the same sufficient to enable it to answer the allega-  
tions thereof, and placing its denial on that ground,  
it denies that on all or any of said dates or times  
libellant herein was and now is or was or now is the  
owner of a certain or any gasoline launch, which  
said launch, when in operating condition or other-  
wise, was of the value of One Thousand Dollars, or  
thereabouts or of any value whatsoever or at all.

## III.

Answering paragraph III of said libel defendant denies that on the 15th day of December, 1912, said launch was lying securely or at all tied to a barge called the "Stocktonia"; denies that said barge was lying tied to a wharf on the banks of a slough at the City of Stockton in the County of San Joaquin, State of California; denies that defendant came with the said steam vessel "J. D. Peters" and carelessly and negligently or carelessly or negligently, or at all carelessly or negligently, ran into the said launch; denies that said steam vessel so badly or at all damaged the said launch that libellant has since or at all been compelled to repair the same at an expense to him of the sum of Four Hundred Dollars or any other sum whatsoever or at all; denies that said libellant has ever since or at all lost the use of said launch, and denies that said libellant will lose the use of said launch "for a period of fifteen days hereafter," or for any other period whatsoever.

And further answering said paragraph III of said libel, defendant alleges that on the evening of December 15th, 1912, the said launch referred to in said paragraph was moored alongside a certain barge at the City of Stockton, State of California; that the said launch had not been assigned to said or any berth by the City Wharfinger of said City of Stockton; that the said launch was so moored to the said barge that it, the said launch, was obscured by the shadow of the barge in such a manner that it was impossible to see the said launch until too late to avoid a collision between said launch and approach-

ing craft; that neither the said barge nor the said launch had on the evening of said December 15th, 1912, and at the time of the collision in said libel referred to, any light or lights exposed for the purpose of warning and guiding other vessels which might be navigating in the waters in said libel referred to. [13]

That the said steamer "J. D. Peters" immediately after leaving her regular home moorings at the said City of Stockton on the evening of said December 15, 1912, collided with the said launch. That at the time of said collision the said steamer "J. D. Peters" was being carefully and in all respects properly navigated by the officers in charge thereof. That it was impossible by reason of the facts hereinbefore alleged for the officers and crew who were in charge of and were handling the said steamer "J. D. Peters" to see or observe the said launch until too late to avoid contact between the said steamer and the said launch.

#### IV.

Answering paragraph IV of said libel defendant denies that the said amount alleged to have been expended by libellant for the alleged repair of said launch is the reasonable cost thereof. And in that behalf defendant alleges that the total damage, if any, sustained by the said launch by virtue of its contact with said steamer was not in excess of the sum of One Hundred Dollars. Defendant denies that the reasonable value of the use of said launch at said time or any time was, and is or was or is the sum of Six Dollars per day. Denies that by reason of the or any negligence of the defendant, as aforesaid, or at

all, or by reason of any negligence or act or omission of defendant, libellant has been damaged in the aggregate of said sum or in any sum whatsoever or at all.

That all and singular the premises are true.

WHEREFORE, defendant prays that this Honorable Court would be pleased to pronounce against the libel aforesaid and to condemn the libellant in costs and otherwise at law and justice to administer in the premises.

C. D. CLARKE,  
Proctor for Defendant. [14]

State of California,  
City and County of San Francisco,—ss.

C. D. Clark, being first duly sworn, deposes and says: That he is an officer, to wit, The Vice-president of the California Navigation & Improvement Company, defendant corporation above named. That he has read the foregoing answer and knows the contents thereof and that the same is true of his own knowledge, except as to such matters as are therein stated on information or belief, and as to those matters he believes it to be true.

C. D. CLARK.

Subscribed and sworn to before me this 21st day of March, 1913.

[Seal]

C. B. SESSIONS,  
Notary Public in and for the City and County of San Francisco, State of California.

Due service of a copy hereof admitted March 21st, 1913.

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Proctor for Libellant.

[Endorsed]: Filed Mar. 21, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [15]

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*In the District Court of the United States, for the Northern District of California.*

No. \_\_\_\_\_.

Vol. \_\_\_\_\_

ARTHUR GENECCO,

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT COMPANY.

**Testimony Taken in Open Court.**

WEDNESDAY, NOVEMBER 12TH, 1913.

REPORTER'S TRANSCRIPT.

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CHARLES R. GAGAN,

EDWARD W. LEHNER,

Official Reporters,

329 P. O. Building. [16]

*In the District Court of the United States, in and for  
the Northern District of California, First Divi-  
sion.*

Honorable MAURICE T. DOOLING, Judge.

AUGUST GENECCO

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT COMPANY.

WEDNESDAY, NOVEMBER 12TH, 1913.

COUNSEL APPEARING:

For the Libellant: H. W. HUTTON, Esq.

For the Respondent: ROY G. HUDSON, Esq.

Mr. HUTTON.—This is an action for damages for a collision that happened between the gasoline launch “Stocktonian” and the steamer “J. D. Peters,” on the 15th day of December of last year, at Stockton.

The answer admits the incorporation of the defendant, and also that it was the owner and operator of the steamer “J. D. Peters” at the time, also admits that she collided with his vessel. It denies, for want of information and belief, the damage, and also the ownership of the “Stocktonian.”

We expect to prove that the “Stocktonian” was lying tied to a barge on the evening in question, and

(Testimony of August F. Genecco.)

that the "J. D. Peters" backed down and upon this vessel and struck her and seriously injured her.  
[17\*—1†]

**[Testimony of August F. Genecco, for Libellant.]**

AUGUST F. GENECCO, called for the libellant, sworn.

Mr. HUTTON.—Q. Where do you reside?

A. 320 East Church Street, Stockton, California.

Q. And that has been your residence how long?

A. About six years at that one place.

Q. What business are you engaged in?

A. I am engaged in the general freighting business on the San Joaquin River, and also in the liquor business.

Q. How long have you been in the freighting business? A. About three years, or a little better.

Q. In December of last year, did you know a gasoline vessel called the "Stocktonian"?

A. Yes, sir.

Q. Whose property was she at that time?

A. She was my property.

Q. How long had you owned her?

A. I owned the "Stocktonian" somewhere between 3 and 4 years.

Q. Were you using her during the month of December of last year, up to the 15th? A. Yes, sir.

Q. In what business?

A. Hauling onions, and also sand, and whatever

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\*Page-number appearing at foot of page of certified Apostles.

†Original page-number appearing at top of page of Testimony as same appears in Certified Apostles.

(Testimony of August F. Genecco.)

we could get to haul.

Q. In connection with the "Stocktonian," did you use any other vessel or any other floating structure?

A. Before I was damaged—is that what you mean?

Q. Were you using anything besides the "Stocktonian"? A. No, not at the time.

Q. Were you using a barge?

A. Yes, I was using a barge.

Q. You were using a barge? A. Yes, sir.

Q. In what method would you use the barge?

Mr. HUDSON.—If your Honor please, this is an action for damages to a launch, a collision between a launch and our vessel. [18—2] I do not see what this has to do with the matter.

The COURT.—This may explain the circumstances of the accident.

Mr. HUTTON.—It is one of the circumstances of the case.

The COURT.—The objection will be overruled.

Mr. HUTTON.—Q. You say you used the "Stocktonian" and a barge? A. Yes, sir.

Q. In what method? Where did you bring your sand from? A. From the San Joaquin River.

Q. How far from Stockton?

A. About 3½ miles where I got the sand.

Q. On the 15th of December, 1912, had the "Stocktonian" been away from Stockton?

A. On the 15th, yes, sir.

Q. Do you know what time she returned?

A. She returned sometime in the afternoon; I was not present when she returned.



(Testimony of August F. Genecco.)

Q. When the barge and the "Stocktonian" returned to Stockton, where did they use to lie?

A. Just at the front of the Ames-Harris factory there, on Webber Point and Stockton Channel.

Q. Alongside of anything, or anywhere?

A. Alongside the wharf; I have the wharf space hired there.

Q. Had you a berth there at that time?

A. Yes, sir. I had 60 feet.

Q. How long had you that berth?

A. I could not just recall how many months, for several months; somewhere around 5 or 6 months, maybe, or maybe a little less.

Q. Do you know the steamer "J. D. Peters"?

A. Yes, sir.

Q. Had she a berth near where your barge used to lie? A. Not that I know of.

Q. Where did she lay there? Did she ever come up the river at all?

A. Well, she passed by; she has a berth up above [19—3] there, and one right across facing my berth.

Q. She had a berth in the same channel?

A. In the same channel, yes, sir.

Q. In the same waters? A. Yes, sir.

Q. How far away from where your berth was?

A. One berth at the head of the channel is about in the neighborhood of a little over two blocks; somewhere near that; I never measured it.

Q. Were there any electric lights around in that vicinity?

A. Yes, sir; there is an electric light about 75 steps

(Testimony of August F. Genecco.)

from there, with four lights.

Q. From where?

A. From my barge, and a 100-foot tower; that is what they call it. I never measured it, but that is what they call it.

Q. State whether or not those electric lights shown down on your barge.

A. Well, they are not there present at the time—

Q. (Intg.) I mean, when they are lighted.

A. Oh, yes, when they are lighted they show there very plain.

Q. Did anything happen to the “Stocktonian” on the night of the 15th of December, 1912?

A. Yes, sir; the engineer that I have, Mr. Jose—

Q. (Intg.) I don’t care about you telling what he told you, but what did you see?

A. I did not see the damages until the 16th of December.

Q. At what time?

A. It was about 7 o’clock when I saw the damage. I called on Mr. Prior, the Assistant Manager—

Q. (Intg.) I don’t care about that; what was the damage?

A. The damage was that the cabin was totally wrecked and squashed in, and is squashed in the stern of her and caused her to have big cracks in the seams of the planking, where it had to be taken out, it could not be used. [20—4]

Q. You subsequently, then, did you, give her to somebody to repair? A. Yes, sir.

Q. To whom?

(Testimony of August F. Genecco.)

A. The Banner Island Boat Works, Mr. George Ingersoll.

Q. Where is that place?

A. That is in the McCloud's Lake, City of Stockton.

Q. How long was she under repair?

A. She was under repair. I never turned the launch in there—from the time that I turned the launch in—let me see, somewhere about two months.

Q. Was she under repair two months?

A. Somewhat about that. I received her in February, I believe it was February 9th.

Q. What was the cost of the repairs?

A. I believe it was \$441.80, if I am not mistaken; I believe it was 80 cents.

Q. Were there any repairs done to her in that time except those that were necessitated by this collision?

A. No.

Q. You did not do any extra work on her?

A. No, sir.

Q. How much a day was the "Stocktonian" worth at that time?

A. Well, I estimated it really—sometimes we are hauling one thing and sometimes another, but I really estimated that boat to be worth about \$7.50 per day. That is what I would have to pay if I could find one to cover the labor that that boat would do.

Q. That is the ruling rate for a boat of her character up in Stockton at that time, if you hired one, about \$7.50 a day?

A. Yes, sir, that would be the best I could do.

(Testimony of August F. Genecco.)

Q. Did the "Stocktonian" make \$7.50 a day for you at that time?     A. Yes, sir.

Q. Do you know how many days' time you lost in her use by reason of these injuries to her?

A. I lost from December 15th to about February 9th; that is, from the 16th of December. [21—5]

Q. How many men did you use in operating the "Stocktonian"?

A. I used three men on the river, and when I came into town to unload I hired an extra man to help unload.

Q. Were they all on the "Stocktonian" or were some of them on the barge?

A. You mean at the time she was damaged?

Q. No, when you were operating her?

A. Oh, yes, they were all on board.

Q. None on the "Stocktonian"?

A. Not when we were tied up.

Q. I mean when she was going up and down the river?

A. Oh, yes; we have the engineer and sometimes we have two and sometimes we have one.

Q. You operated them jointly and it took three men to operate those boats?     A. Yes, sir.

Q. When the barge was in the water and the "Stocktonian" was in the water, and they were both alongside of one another, which was the highest out of the water?

A. I never did measure it; I did not measure it, but the launch is the highest. We had about half a load on the barge and that brings the barge out about

(Testimony of August F. Genecco.)

21½ feet out of the water.

Q. Were all parts of the "Stocktonian" higher than the barge?     A. Just the cabin.

Q. Just the cabin?

A. Yes, the cabin, and I don't know whether the hull was above, or not.

Cross-examination.

Mr. HUDSON.—Q. You say you had this launch 3 or 4 years?     A. Yes, sir.

Q. Was it new when you acquired it?

A. Yes, sir; when I bought that launch I had it all repaired over new, replanked, and so forth.

Q. It was a second-hand launch when you bought it?     A. Yes, sir. [22—6]

Q. You say you used it in hauling?

A. Yes, sir, general freighting on the river.

Q. Had you been using it continuously up to the 15th day of December, 1912?

A. Yes, sir, I just came in that day.

Q. You had been using her every day?

A. Mostly every day.

Q. You say you had been earning \$7.50 a day with that boat?     A. Yes, sir; that is what I figure, yes.

Q. And you say that the reasonable value of that launch to you for its use was the sum of \$7.50 a day?

A. That is just about the nearest figure—the reasonable amount, yes, sir.

Q. I show you the original libel filed in this case, and calling your attention to the verification I ask you if that is your signature?

A. Yes, sir, that is my signature.



(Testimony of August F. Genecco.)

Q. At the time you signed that were you familiar with the contents of the libel?      A. No, sir.

Q. Had you read it?

A. No, sir, not that I know of.

Q. Had it been read to you?

A. No, sir, not that I know of.

Q. You did not know what matters were set forth and alleged in this libel then?

A. No, sir, I did not.

Q. You state in your verification that "I have read the foregoing libel and know the contents thereof and the same is true of my own knowledge." Did you then swear to something that was not a fact when you verified this libel?

A. I don't know what the libel is.

Q. Will you just glance at that and tell me whether or not you read it before you verified it, or whether it was read to you?      A. That is my signature.

Q. Can you now state whether or not at the time you signed that you had either read this document or had it read to you?

A. My goodness, I don't remember even of signing it, to tell [23—7] the truth about it.

Q. You have no recollection even of signing it?

A. No, I have not.

Q. And if you did sign it you have no recollection of whether you read it or of having it read to you?

A. No, I do not remember reading it at all.

Q. And you have no recollection of its having been read to you?      A. No.

Q. And yet you swore you did read it and you

(Testimony of August F. Genecco.)

knew the contents of it?

A. Well, that is my signature.

Q. I call your attention to paragraph IV of the libel containing the recital that the reasonable value of the use of said launch at said time was and is the sum of \$6.00 per day; was that allegation correct?

A. Yes, but just a moment. That is what I always had to pay Mr. E. E. Gross, and that was the cheapest launch I could get at the time; whatever launch I could hire the cheapest and I could get was at \$7.50 per day.

Q. You allege in your libel that the reasonable use and value of that launch to you was \$6.00 per day; was that allegation correct at the time you filed this libel? A. I suppose it must have been.

Q. Well, you know whether it was or was not; was it, as a matter of fact, correct?

A. Well, I suppose it is, but it passed my mind.

Q. Why do you now say that the reasonable value of the use of that launch to you was \$7.50 per day?

A. Because I stopped and figured it over and that is the value to me.

Q. You are more positive about it on a date considerably subsequent to the date of the accident than you were at the time [24—8] you talked this matter over with your counsel and swore to this libel?

A. After considering it and figuring it I find it was \$7.50 per day.

The COURT.—Q. Did you hire any launches?

A. Yes, I hired launches from Mr. Samuel Long. He hauls in these brick barges and tows scow schoon-

(Testimony of August F. Genecco.)

ers; but he could not stay with me there and he towed me down, and when he towed me down the boys would pull me around from one side to the other with a rowboat, and I paid him \$4.00 just to take me down there and back.

Mr. HUDSON.—Q. Did you hire launches all day?

A. No, not all day. I was just towed down and back.

Q. Then, as a matter of fact, of your own knowledge you do not know what the rate per day was for the hire of a launch similar to yours in those waters at that time?

A. When I did hire a launch to take my boat's place I paid \$7.50 a day for it by using it all day—that is, just for the plain launch.

Q. Did you hire a launch similar to yours for the entire day? A. Not at that time.

Q. When? A. I hired one before the accident.

Q. How long before? A. Just about a year.

Q. About a year before? A. Yes, sir.

Q. Do you know anything about what the prevailing rate for hiring launches similar to yours was on or about the 15th day December, 1912?

A. I figured it at that.

Q. You estimated it at a rate you paid a year prior? A. Yes, sir.

Q. You say that at the end of this wharf, I believe you called it, there was a pole with lights on?

A. That is a city light, an electric city light; I believe that is what they call them. [25—9]



(Testimony of August F. Genecco.)

Q. Were you on this wharf on the night of December 15, 1912?      A. No, sir.

Q. Do you know whether or not that light was burning on that night?      A. No, sir.

Q. You don't know anything about that?

A. No, sir.

Q. How far in from the end of the wharf where this light pole was, was your boat moored?

A. About 75 steps. I just stepped it out, somewhat about 75 steps; it may be a little more. I just took a rough estimate.

Q. With reference to the location of the barge, the launch was stationed where?

A. Alongside, when I seen the damage.

Q. Do you know whether or not your launch had any lights burning and exhibited on it on the night of December 15, 1912?

A. Not that I know of, sir.

Q. To the best of your belief it had no light?

Mr. HUTTON.—His belief does not cut any figure, your Honor; it is a question of fact.

A. I could not say.

Mr. HUDSON.—I am trying to get at his knowledge, as to whether there was a light.

Mr. HUTTON.—And it does not make any difference whether she had a light or not; the law does not require a vessel to carry a light when she is alongside a wharf.

Mr. HUDSON.—There may be a difference of opinion about that.

The COURT.—He says he does not know.

(Testimony of August F. Genecco.)

Mr. HUDSON.—Q. You don't know whether she had a light, or not? A. No, I could not say.

Q. How long after the 15th of December was it you turned your launch over to Mr. Ingersoll to be repaired?

A. Somewhere about three weeks. [26—10]

Q. You had her in your possession about three weeks before you attempted to get her repaired?

A. I had her about three weeks; I could not get no compromise and I was ordered to take her over and have her repaired.

Q. You were ordered by whom?

A. By my attorney, Mr. Hutton.

Q. How long after you delivered it to Mr. Ingersoll was it before it was returned to you?

A. When I received it it was about February 9th, I believe.

Q. During all of that time was it in process or repair?

A. Outside of the time of waiting, about three weeks, before I turned it in.

Q. When were you notified by Mr. Ingersoll first that the launch was ready for delivery to you?

A. I believe it was some time around February 9th. I paid the bill on the same day and it was the day that I paid the bill that I received the launch.

Q. I did not ask you when you received it; I asked you when were you first notified by Mr. Ingersoll that the launch was ready for delivery to you?

A. I believe it was about February 8th, in the evening.

(Testimony of August F. Genecco.)

Q. The day before you got it?     A. Yes, sir.

Q. You say you paid Mr. Ingersoll \$441.80?

A. I believe it was 80 cents.

Q. Have you a receipted bill for the amount you paid Mr. Ingersoll?

A. Yes, sir, we have a receipted bill.

Q. Mr. Hutton, will you let me see it?

Mr. HUTTON.—This is only a duplicate (handing).

Mr. HUDSON.—You have not the original receipted bill?

Mr. HUTTON.—That is the only one I have; that is the duplicate. [27—11]

Q. What became of the original receipted bill?

A. I have it at home. That is a duplicate.

Q. Did you copy this from the original?

A. I don't know how that was made out. Mr. Ingersoll brought that down just for a duplicate and turned it over to Mr. Hutton. Mr. Ingersoll is present; he could say whether he copied it, or not.

Q. Mr. Ingersoll is here, is he?     A. Yes, sir.

Q. Have you been in the habit of tying this launch up alongside this barge?     A. No, sir.

Q. This was the first time you had ever tied it up there?     A. That is, to my knowledge.

Redirect Examination.

Mr. HUTTON.—Q. Was there any difference in the value of barges, the use of barges, between December, 1912—I mean launches—and the time you hired that other launch?     A. Not that I know of.

(Testimony of August F. Genecco.)

Q. How many launches did you own altogether?

A. One launch.

Recross-examination.

Mr. HUDSON.—Q. How do you know there was no difference in the value of launches—

The COURT.—He says there was no difference that he knew of.

Mr. HUDSON.—I did not get the latter part of the answer, your Honor. That is all.

**[Testimony of Manuel Jose, for Libelant.]**

MANUEL JOSE, called for the libelant, sworn.

Mr. HUTTON.—Q. What is your business?

A. I am operating Mr. Genecco's launch. [28—12]

Q. Where do you live? A. I live in Stockton.

Q. Do you know the "Stocktonian," the gasoline launch "Stocktonian"?

A. Yes, sir, I am operating it.

Q. Were you on her on December 15th, 1912?

A. Not at the time she got into the collision with the boat; that is, when the boat smashed alongside.

Q. But you were on her that day?

A. I was. I came on at half-past 5 in the evening, on Saturday afternoon.

Q. What position did you hold?

A. On the launch?

Q. Yes, what job had you?

A. I am the operator; I am the captain and engineer on her.

(Testimony of Manuel Jose.)

Q. Had you been out with the launch and the barge that day?

A. Yes, sir; not on Sunday. I came in on Saturday afternoon at half-past 5 in the evening.

Q. Where did you go with the barge?

A. I came up to my dock, to my berth.

Q. How long had you been in the habit of going to that dock?

A. Every time I came in with a load.

Q. How often did you come in with a load?

A. Most every other day; that is, if I have not got any bad luck, if I cannot get my loads when I am hauling sand.

Q. When you got up to the berth what did you do with the barge and the launch?

A. I tied the barge alongside the wharf, and I tied my launch behind the barge and after I had it tied up the wharfinger hollered at me from across the street,—I did not hear him, but one of the boys said, “The man is hollering at you,” and I said, “What do you want?” and he said, “Get that launch away from there.” I said, “What for?” He said, “That belongs to another man.” I said, “Where am I going to tie my launch?” and he said, “Tie her alongside,” and I tied her alongside.

Q. Alongside the barge?

A. Yes, sir. [29—13]

Q. How long did you stay around there?

A. I stayed there until 6 o'clock.

Q. Then where did you go? A. I went uptown.

Q. How far? A. Just about 3 or 4 blocks.



(Testimony of Manuel Jose.)

Q. What did you go for?

A. I had to get some little things that I needed.

Q. Then what did you do?

A. I came back about 7 o'clock.

Q. When you got back what was the condition of things there?

A. There was nothing that night; that night there was nothing, the night that I got into Stockton nothing happened.

Q. What night was it that the steamer ran into you?

A. Sunday night,—Sunday, December the 15th.

Q. That was the next night?      A. The next night.

Q. Did the "Stocktonian" lie alongside of the barge all of Sunday?

A. Yes, sir. That is the only place I could find to tie her, and furthermore, I was ordered to tie her there.

Q. Did the "J. D. Peters" come into Stockton that morning?

A. No, sir, he lay right across from me.

Q. When did she get into Stockton?

A. I think Saturday morning.

Q. Saturday morning?

A. I think so; I am not sure; I don't know the schedule. She don't leave until Sunday night.

Q. Where were you at the time the "Peters" ran into the "Stocktonian," where were you personally?

A. I was uptown.

Q. Was there anybody on the launch that you know of?      A. I left the barge pilot on her.

(Testimony of Manuel Jose.)

Q. When the launch is lying alongside of the barge which is the highest out of water, the barge or the launch?

A. It just depends; the cabin of the barge is higher because she lays about 10 feet above the deck, and of course the launch is higher than the main deck of the barge by 2 feet or over.

Q. How far away from the launch was it that the "Peters" was on Sunday? [30—14]

A. Well, just across the channel. The Stockton channel, about twice or three times as wide as this hall. She was lying on one side and I was lying on the other and the channel was open in the center.

Q. Was she there all day Sunday?

A. Yes, sir, until the afternoon, and then she moved up to the other berth to take on passengers.

Q. Your launch was there all day Sunday?

A. Yes, sir.

Q. What time did you go down to the "Stocktonian" on Sunday evening, if you got there at all?

A. About 10 minutes after 6 in the evening.

Q. What was the condition of the "Stocktonian" then? A. She was all staved in.

Q. Did you see the "Peters" around there?

A. The "Peters" was just around the bend, just turning around the lake.

Q. What part of the "Stocktonian" was stove in?

A. The whole cabin and the stern of her. She took the cabin clear off; the cabin was smashed right down, and it caved the stern in that way.

(Testimony of Manuel Jose.)

Q. Any lights around there on the wharf anywhere near?

A. There is a light on the Armory Hall, right across, a little light, and there are those towers about 75 steps away; I stepped if off this morning.

Q. How many lights were on the tower?

A. Four of them.

Q. Electric lights or gaslights or what?

A. Electric lights.

Q. Did those lights shine down on where the "Stocktonian" was at the time she was hit?

A. Yes, sir. You can read the letters across the wharf on the wharfinger's place there.

Q. Were the lights burning that night when you got back there the night of the collision?

A. Yes, sir. [31—15]

Cross-examination.

Mr. HUDSON.—Q. What time did you get back there? A. 3 minutes after six.

Q. What time was the collision?

A. About 5 minutes after 6.

Q. You were not there at the time the collision occurred?

A. I was not there; when I got there the boat was just trying to make the turn in the lake.

Q. How long is the "Stocktonian"?

A. The "Stocktonian" is 32 feet long.

Q. Where did you say the "Peters" was lying Sunday? A. Right across from me.

Q. Right across from you?

A. Yes; that is, through the day.



(Testimony of Manuel Jose.)

Q. You are quite positive about that?

A. Yes, sir, I think it was the "Peters" or some other boat.

Q. There was some other boat lying across from you?

A. I am not keeping track of these boats. There was a boat across from me, and the "Peters" generally comes in there on Sunday morning.

Q. Could that have been the "Walker" that was lying across the channel?

A. No, it could not have been the "Walker"; I don't think so.

Q. Would you say it was not the "Walker"?

A. Well, I don't know. I could not say; I thought it was the "Peters." I know the boat moves from there up to the other wharf in the afternoon sometime. Of course, I don't know exactly that it was the "Peters"; I don't know exactly because I am not keeping track of them both.

**[Testimony of O. C. Smith, for Libelant.]**

O. C. SMITH, called for the libelant, sworn.

Mr. HUTTON.—Q. What is your occupation, Smith? A. A laborer. [32—16]

Q. Where do you live? A. I live in Tracy.

Q. Where is Tracy?

A. About 19 miles this side of Stockton.

Q. Were you working on the "Stocktonian" in December, 1912? A. Yes, sir.

Q. What were you doing on her?

A. We were hauling sand and onions.

Q. Were you on her at the time she came into

(Testimony of O. C. Smith.)

Stockton on the day before she got into collision?

A. Yes, sir.

Q. When you came in what did you do; that is, when you came up the channel with the sand-barge?

A. We tied up to the wharf.

Q. Where did you tie the "Stocktonian"?

A. Behind her.

Q. How long did you stay there?

A. I should judge maybe 5 minutes, or it might have been 10; I don't remember just how long.

Q. Where did you go then? A. On the side.

Q. Did you see a wharfinger around there?

A. I heard a man holler from across and he said, "Take that launch and tie her alongside." I said to the engineer, "What is that fellow hollering about?"

Q. Then you tied her where? A. Alongside.

Q. How long did she stay there?

A. Well, I don't know how long she stayed there.

Q. Was she there the next day? A. Yes, sir.

Q. She lay there all Sunday? A. Yes, sir.

Q. Were you on her at the time the "Peters" ran into her? A. No.

Q. Were you on her at all on Sunday?

A. On Sunday, yes, I was on her after she was smashed up.

Q. Did you see her after she was injured?

A. Yes, sir.

Q. What, if anything, was the matter with her?

A. It knocked the top all off; that is all I know about it.

(Testimony of O. C. Smith.)

Q. When did you see her first after she was injured? [33—17]

A. Well, I should judge about 5 minutes after it was done; she was turning in the channel out there, the boat that backed out up there.

Cross-examination.

Mr. HUDSON.—Q. You say somebody called out to you and told you to take the launch away from the place where you moored her, and to moor her alongside the barge? A. Yes, sir.

Q. Who was it called that out to you?

A. I don't know; I asked the engineer who it was, and the engineer said it was the wharf-boss.

Q. Would you know that gentleman if you were to see him?

A. No, I don't think I would know him.

[Testimony of Ben Real, for Libellant.]

BEN REAL, called for the libellant, sworn.

Mr. HUTTON.—Q. Where do you live?

A. I live in Stockton.

Q. Were you on the "Stocktonian" at the time the "Peters" run into her, in December of last year?

A. Yes, sir.

Q. You were on the vessel at the time?

A. Yes, sir.

Q. Were you on the vessel or on the barge?

A. I was on the barge.

Q. Any lights around there?

A. Only the light that I had in front of the window, right toward the launch. The launch laid about in

(Testimony of Ben Real.)

this position, and the light was right in front, a lantern.

Q. Were there any electric lights around there?

A. Yes, sir.

Q. How close?

A. Well, I should judge about 75 steps, more or less.

Q. With respect to the wharf there where the sand-barge was lying, was the wharf full or was it not full at that time?     A. It was full. [34—18]

Q. Was there any other place the "Stocktonian" could lay except where she did?

A. Not handy, that I know of.

Q. Did you hear any conversation the day before that caused the launch to be tied alongside the sand-barge?     A. Yes, sir.

Q. What did you hear?

A. I heard a man across the wharf make the remark to the captain to move his launch out of there.

Q. And when he did that, did any vessel take that place?     A. Well, not at that time.

Q. Was there later?

A. The butcher; that was the butcher's landing.

Q. She went into where you had been?

A. Yes, sir.

Q. How did the "Peters" come down on the launch at that time?     A. It came backwards.

Q. What did she hit the launch with?

A. With her bow.

Q. Did you see anybody on the "Peters"?

(Testimony of Ben Real.)

A. I seen a good many on there; I didn't know any of them.

Q. Where did she back from?

A. She backed from the head of the channel.

Q. How long did you see the "Peters" before she struck you? By the way, how far away was she when you first saw her?

A. I never seen the "Peters" until she hit it first and then I opened the window and I just seen it when it smashed the balance of the "Stocktonian"—the launch.

Q. Did you see the "Peters" before on that day?

A. Sir?

Q. On the day that she hit that launch, did you see the "Peters" before she struck you?

A. I never noticed her.

Q. Did you see her during the forenoon or the afternoon?

A. I did not. There were boats there, but I never paid no attention what boats they were.

Cross-examination.

Mr. HUDSON.—Q. Where did you say you hung this lantern?

A. Right in front of the window. [35—19]

Q. On the launch?

A. No, sir, in the cabin on the barge.

Q. In the cabin on the barge? A. Yes, sir.

Q. Was there any light on the launch?

A. No, sir.

Q. Was there a fence or upper works on this barge



(Testimony of Ben Real.)

to hold the sand or other contents you are carrying as freight?

A. Well, there were boards about 3 feet high.

Q. About 3 feet high around the barge?

A. Yes, sir.

Q. Were they on there on the 15th of December, 1912?      A. Yes, sir.

Redirect Examination.

Mr. HUTTON.—Q. Were the boards above the light or the light above the boards?

A. The light was above the boards.

Q. Was the light on the house or was it down on the deck?      A. It was inside of the cabin.

Q. How high is the cabin above the deck?

A. Well, I should judge about 12 feet, more or less.

Q. Where were these boards, were they on deck or up around where the cabin was?

A. These boards were around the whole barge.

Q. Down on the deck?

A. They are on there for the purpose of us hauling the sand. They are all around the barge, 3 12-inch planks all around.

Q. That is to keep the sand from falling off?

A. Yes, sir.

Q. And then comes the cabin?      A. Yes, sir.

Q. How high is the cabin above the boards?

A. Well, I should judge about 8 or 9 feet, more or less.

Q. Where was the lantern?

A. The lantern was inside of the cabin.



(Testimony of Ben Real.)

Q. How high would the lantern be above the boards?

A. Well, I should judge it would be maybe perhaps 6 or 7 feet more or less, or something like that.

Recross-examination.

Mr. HUDSON.—Q. You say the lantern was inside the cabin of the barge? [36—20]

A. Yes, sir.

Q. Did you have any light displayed on the outside of the barge? A. No, sir.

Q. No light at all? A. No, sir.

Mr. HUTTON.—Q. Was there any window there?

A. Yes.

Q. How near was the lantern to the window?

A. Right against it, almost against, on a wire.

Q. The lantern was inside the cabin, and the cabin has windows? A. Yes, sir.

Q. How many windows did it have?

A. It has four windows.

Q. Where are they?

A. One on each side and two in the front.

Mr. HUDSON.—Q. Did the upper part of this launch project above the top of this 3-foot fence that was around the edge of the barge?

A. Well, I think so.

Q. How much? A. Perhaps a foot or two.

Q. Are you sure it projected at all above the top of that fence? A. I think it would.

Q. You think it would?

A. A little higher than the boards.

[**Testimony of G. W. Ingersoll, for Libelant.**]

G. W. INGERSOLL, called for the libelant, sworn.

Mr. HUTTON.—Q. What is your occupation, Mr. Ingersoll?     A. Boat-builder.

Q. How long have you been in that business?

A. Well, following in steady I have been at it about six years.

Q. Where are you located now?

A. Banner Island Boat Works.

Q. Where were you located in December, 1912, and January and February, 1913?

A. At the same place.

Q. Do you know the launch "Stocktonian"?

A. I do.

Q. Did you do any work on her during January and February, 1913?

A. I don't remember doing any this year; it was last year I did the work on it, I think.     [37—21]

Q. Well, you did some work on her, did you?

A. In this year.

The COURT.—This accident occurred in December, 1912, did it not?

Mr. HUDSON.—I think the witness is confused in the date. He must have done the work this year, if he did any.

Mr. HUDSON.—Q. Is that your handwriting (handing)?     A. Yes, sir.

Q. Can you refresh your memory as to the dates from that?     A. That is right, that is correct.

Q. When was it you did the work?     A. 1913.

Q. What month?

(Testimony of G. W. Ingersoll.)

A. I think it was in February.

Q. What was the matter with the "Stocktonian" at the time you took her to do the work on her?

A. The cabin was broke.

Q. Anything else? Just tell the Court in detail what you did to her.

A. I put on a new cabin and a new after-deck, and new carlins and recaulked her in the stern and fixed the clamps.

Q. What was the occasion of that work, what caused it to be done? A. By being broke off.

Q. Did you do any more work than was caused by the injury which you saw, to her?

Mr. HUDSON.—I object to that question as calling for the opinion and conclusion of the witness. He does not know what injuries were done. All he knows is that this boat was brought there and he did certain work; beyond that I submit he should not go.

Mr. HUTTON.—I think that is calling for a question of fact.

The COURT.—The objection is overruled.

Mr. HUTTON.—Q. When you first got her, just tell in detail what was the matter with her. You say the cabin was off and the deck was broke; what else?

A. The cabin was smashed off [38—22] and the clamps were loosened in the stern, and I put on new stanchions and a new cabin complete.

Q. Why did you put them on?

A. I put them on because the man wanted them repaired and put in working order again.

(Testimony of G. W. Ingersoll.)

Q. Did the injuries you saw to the boat cause that stem to be put on?     A. Yes, sir.

Q. How about caulking her—you say you caulked her; what caused her to be caulked, why did you caulk her?

A. I caulked her because she was leaking; I had to caulk her in the stern.

Q. Necessary work on account of these injuries?

Q. Did you do any work in or around her at that time except what was necessary and what was caused by the injuries you saw to her?     A. No, sir.

Q. What was your bill against her for the work?

A. \$441 and some cents.

Q. Was that a reasonable price for the work at that time and at that place?

A. Yes, sir, I think so.

Q. No overcharge?     A. No, sir.

Q. Do you know where the "Stocktonian" lay in Stockton as a rule?     A. Yes, sir.

Q. Do you know her berth?     A. Yes, sir.

Q. Any lights around there?     A. Yes, sir.

Q. What lights?     A. Electric lights.

Q. What kind of an electric light?

A. One of these large size, four lights on a pole, about 100 feet high.

Q. Anything intervening between that and where the "Stocktonian" lay?     A. No, sir.

Cross-examination.

Mr. HUDSON.—Q. Do you know where the "Stocktonian" lay on the night of December 15th, 1912?     A. No, sir. [39—23]

(Testimony of G. W. Ingersoll.)

Q. You don't know where she lay?

A. No, sir.

Q. Do you know whether these electric lights you speak of were burning on that night?

A. I could not swear to it, but the lights burned most all the time there; I never knew them to be out.

Q. You don't know whether they were burning that night, or not, do you?      A. No.

Q. And you don't know where the "Stocktonian" lay that night?      A. I could not say.

Q. In your opinion what was the value of this launch at the time she was turned over to you for repairs?

A. I think the launch cost some \$800 when I fixed her over, at the time she was brought to me. I fixed her over, that is, when I first built the launch.

Q. \$800?      A. Yes, sir, \$800.

Q. My question now is directed to your opinion of her value at the time she was delivered to you in February, 1913, for repairs?

A. Well, I don't know exactly what the value of it was then. I know the boat cost a year or so before, he paid me \$800 for the repair work on the launch, for putting her in running order, without the engine.

Mr. HUTTON.—Q. \$800 for repair work or for the launch? You say he paid \$800 to you a year before that?

A. Yes, sir; Mr. Genecco paid me \$800 to put the launch in first-class shape.

Q. That was for repair work?

A. For repair work, yes, sir. It was a second-



(Testimony of G. W. Ingersoll.)

hand launch brought to me, and I tore it all down and put new planking on it. There was nothing left of the original launch except 3 or 4 ribs and a keel.

The COURT.—Q. How long did it take you to make the repairs caused by the smashing?

A. It took me I think pretty nearly two months; I would not say exactly; I did not keep an exact account of it. We have an account of it in the bill.  
[40—24]

Mr. HUTTON.—Q. She was in good shape, then, at the time of the collision or just prior to the collision, was she?

A. I think she was. I could not say for sure. So far as I know she was in good shape because I did Mr. Genecco's work all the time. The year before I built him a barge, and did all his work.

Mr. HUDSON.—Q. How recently had you seen the "Stocktonian" prior to the 15th of December, 1912?

A. Well, I could not say exactly; every month or so he always comes in for some little fixing, or something or other.

Q. Within what period of time prior to the 15th of December, 1912, had you made any examination of the "Stocktonian" for the purpose of determining what condition she was in?

A. I did not make any examination.

Q. Then, as a matter of fact, you do not know whether she was in good seaworthy condition prior to the 15th of December, or not, do you?

A. Nothing more than what I could tell by looking



(Testimony of G. W. Ingersoll.)

at her from a distance.

Q. When was she delivered to you by Mr. Genecco for repair subsequent to the 15th of December?

A. About the 1st of the year.

Q. About the 1st of January? A. Yes, sir.

Q. Is that as close as you can fix the time?

A. Yes, sir; it was somewhere about that time. I did not keep exact account of it in my head. Of course, we had a book account. I cannot bring to my mind exact dates of such things.

Q. Do your records show when she was turned over to you? A. Yes, sir.

Q. Have you those records, or a copy of them, with you? A. No, sir, not any more than that bill.

Mr. HUDSON.—Have you any such records, Mr. Hutton? Have you any records or copies of records kept by this gentleman [41—25] or by his company showing when the launch was turned over for repairs?

Mr. HUTTON.—No. There was some correspondence between your concern and myself personally about it and that took some little time.

Mr. HUDSON.—There is nothing in that correspondence to show the dates.

**[Testimony of Manuel Jose, for Libellant  
(Recalled).]**

MANUEL JOSE, recalled for libellant.

Mr. HUTTON.—Q. When you moved the “Stocktonian” away from the side of the wharf to the side of the sand-barge on that Saturday night, was there anything that took your place?

(Testimony of Manuel Jose.)

A. There was a butcher-boat, that came in there a little later.

Q. Was the wharf full then?      A. Yes, sir.

Mr. HUTTON.—That is our case, your Honor.

**[Testimony of E. S. Lee, for Respondent.]**

E. S. LEE, called for the respondent, sworn.

Mr. HUDSON.—Q. Where do you reside, Mr. Lee?      A. I live in Stockton.

Q. What is your occupation?

A. Master mariner.

Q. Are you engaged in that occupation at the present time?      A. Yes, sir.

Q. A captain in command of any vessel?

A. Captain of the steamer "J. D. Peters."

Q. Is that the "Peters" that has been referred to in the testimony here?      A. Yes, sir.

Q. Were you in command of the steamer "Peters" on the 15th day of December, 1912?      [42—26]

A. I was.

Q. Will you state to the Court where on the evening of December 15th the steamer "Peters" was lying?

A. She was lying at her depot wharf, at the head of the Stockton channel, about 600 feet above where this accident occurred.

Q. At the head of the Stockton Channel?

A. Yes, sir, on the same side.

Q. What time in the evening of December 15th, 1912, did the steamer "Peters" leave that location?

A. She left at 6 o'clock.

(Testimony of E. S. Lee.)

Q. Bound for where?

A. Bound for San Francisco.

Q. Will you state briefly to the Court what you know in connection with the collision between the steamer "Peters" and this launch, the "Stocktonian" and when you first observed the "Stocktonian," and under what circumstances; just tell the Court briefly what you know about this matter?

A. We left our landing at 6 o'clock and backed down the channel. It was a very dark night, and as we got down close to where this other boat lay I saw this launch, but we were so close to it that we could not avoid running into it.

Q. What is the width of this channel?

A. I believe it is 132 to 135 feet.

Q. Where is the width 135 feet?

A. At the head of the channel.

Q. What is the width of the channel at the spot where the "Stocktonian" was moored to this barge?

A. It is said to be 132 feet here.

Q. What is the practice of the steamer "Peters" in going into this channel, to tie up to her place?

A. She has to go in head up because the channel is so narrow it is impossible to turn around.

Q. Consequently in leaving she had to back out?

A. Yes, sir.

Q. How long has the steamer "Peters" been berthing at this place where she was tied up on the evening of December 15, 1912? [43—27]

A. I think about a year or a year and a half.

Q. You think it has been at least a year?

(Testimony of E. S. Lee.)

A. At least a year.

Q. How many trips a week does the steamer "Peters" make to Stockton and to this berth?

A. We make three trips a week.

Q. And you have been doing that regularly all the time she has been berthing at this place?

A. Yes, sir.

Q. What is the width of the steamer "Peters"?

A. She is 44 feet or 46 feet beam, from guard to guard; I am not exactly sure.

Q. Will you state whether or not at the time of this collision there was moored on the south side of the channel opposite the point where the barge and the "Stocktonian" were moored any other steamer tied up?

A. Yes, sir, the steamer "T. C. Walker," the sister ship to the "Peters," or almost identically the same as the "Peters"; she is about 46 feet beam.

Q. What is the width of this barge, if you know, to which the "Stocktonian" was tied?

A. I would say she was 20 feet or maybe 25 feet wide.

Q. What, if you know, is the width of the launch "Stocktonian"?

A. She ought to be 8 feet beam, I should think, according to her length. They say she is 30 feet.

Q. What was the approximate width of the channel between the "Walker" and the outside of the launch "Stocktonian" at the time the "Peters" passed down the channel?

Mr. HUTTON.—I do not think that is material,

(Testimony of E. S. Lee.)

your Honor. If he could not get out without endangering other people's property he should have stayed there until he had the channel clear.

Mr. HUDSON.—It is simply one of the circumstances, your Honor.

The COURT.—Well, we will take the testimony, but it is [44—28] simply a matter of computation from the figures which he has already given.

Mr. HUDSON.—Of course, I know your Honor will compute the distance in arriving at your decision as to whether or not the steamer did go out there in a proper manner.

The COURT.—We have that fact before us. The channel was 132 feet, and a 44-foot boat on one side and 25 feet and 8 feet on the other.

Mr. HUDSON.—Q. How close were you to the "Stocktonian" at the time you first observed her?

A. I was right up alongside of her, the stern of the boat was.

Q. What portion of the steamer "Peters" came in contact with the launch?

A. The steamer got by until a little aft the forward gangway and it touched there, her guard rode the launch and brushed against her.

Q. What is the guard?

A. The guard is the overhang; it is about a 2 or 3 foot overhang from the hull. The guard went over the launch and broke the house or cabin of the launch.

Q. What speed was the steamer "Peters" making at the time of the collision?



(Testimony of E. S. Lee.)

A. The "Peters" was going down under a slow bell.

Q. By a slow bell you mean what?

A. Half-speed.

Q. Where were you standing at the time you first observed the launch?

A. I was standing on the "Texas" deck, on the port side, the after port-quarter. The after port-quarter is on the port side, aft, anywhere from amidships to stern; I stood pretty close to the stern, on the port side, on the "Texas" deck.

Q. After you first observed the launch there was it possible to avoid colliding with her?

A. No, I think not.

Q. Was there any light on the launch? A. No.

Q. Now Captain, with reference to this electric light that has been spoken of by some of the witnesses on the end of the wharf [45—29] and on the side of the channel, in the position in which the barge and the launch were lying, would that electric light light up and show the launch lying alongside the barge?

A. No. The seawall there is about 12 feet from the surface of the water and the barge and the launch were low, and they lay down in the shadows. This electric light casts deep shadows upon the seawall on that side.

Q. Was the launch lying in the shadow of the barge?

A. Yes, the launch and the barge were both in shadow. The pilot-house of the barge was in the rays of the light. The pilot-house of the barge is a



(Testimony of E. S. Lee.)

little square structure right on the stern of the barge. That might have been up on a level with the wharf. I could not see that.

Q. You could see the top of the pilot-house on the barge?

A. Yes, sir. The hull of the barge lay in the shadow of the seawall and the launch lay in the shadow of both.

Q. By reason of the position which the barge was occupying, and the relative positions of barge and launch, these lights on the pole cast no illumination on the launch, did they?

A. No. The light was a detriment to me.

Q. I show you what purports to be a pencil-drawing and ask you to state what it is.

A. This is a little sketch I made of the channel and the boats as they lay that night.

Q. Showing relative positions and distances?

A. Yes, sir; it shows the distances and the position of my boat when she hit the launch and the barge; the steamer "Walker" lying opposite, and other craft around.

Q. When did you make that, Captain?

A. I made that soon after this occurred, I think within a week.

Mr. HUDSON.—I offer this in evidence as "Respondent's Exhibit" for illustrative purposes and ask that it be marked. [46—30]

Mr. HUTTON.—Of course it is not drawn to scale?

Mr. HUDSON.—No, it is not drawn to scale. It

(Testimony of E. S. Lee.)

is simply to show the relative positions and the width and length of the channel.

The COURT.—Let it go in.

(The document was here marked Respondent's Exhibit "A.")

Cross-examination.

Mr. HUTTON.—Q. Captain, did you go down and look at the channel before you started out that night? A. No, sir.

Q. You just started your boat out from the head of the channel whether there were any obstructions there?

A. When I got up on the stern of my boat, when I start out every evening, I always look down the channel, of course. The channel might be entirely blocked, or there might be something cross-wise, or there might be something landing there just at that time. I always look to see. I looked as usual this night, and I did not see anything in the way, and I gave the signal for the mate to cast loose and we proceeded.

Q. And when you started out from where you had been tied up I suppose you were in the pilot-house, were you not? A. No, sir; I was not.

Q. Who attended to the bells? A. The pilot.

Q. And you communicated to him when to go ahead and when to stop and when to back?

A. Yes, sir.

Q. You did not have any lookout there, did you?

A. A lookout where?

Q. Up on the deck with you.

(Testimony of E. S. Lee.)

A. No, I was the lookout myself. I do not have a lookout when I am there.

Q. You were navigating the vessel and attending to the bells [47—31] and giving the orders to stop and start the vessel?

A. The pilot acts under my supervision; he does what I tell him to do.

Q. You give the orders to him, do you?

A. Yes, sir, I give the orders.

Q. The handling of the vessel was under your supervision and control and orders at that time; is that correct? A. Yes, sir.

Q. You did not have anybody further aft than you on the deck of the "Peters" on that night, as a lookout?

A. No; you could not get much further aft than I was; you would have to get out over the top of the wheel maybe and that is a dangerous place.

Q. The pilot was in the wheel-house up forward, was he not? A. Yes, sir.

Q. Who gave orders as to the steering of the vessel—you?

A. He uses his judgment from what he can see, and if the boat is going too much to port or too much to starboard, I tell him to steady her to port or steady her to starboard; I sing out to him through a megaphone. If the boat is not straight, or if she is going the wrong way, he handles her according to my directions.

Q. You knew there were vessels on both sides of the channel, did you not?

(Testimony of E. S. Lee.)

A. Yes, sir; there are always vessels on both sides of the channel.

Q. Do you know that the "T. C. Walker" went away from that berth that afternoon; do you know whether she did or did not?     A. No, I do not.

Q. You don't know whether she moved away or whether she did not?

A. No. She was there when I went out.

Q. Did you ever go aboard the sand-barge?

A. No, I never have been aboard of it; I have been right up alongside of it. [48—32]

Q. Then you cannot tell how wide she was?

A. Just from casual examination, that is all.

Q. You do not know how wide the launch was either, do you?

A. Only from my judgment in looking at her; I have seen the launch a hundred times.

Q. You don't know how long she was?

A. Yes, sir, I know how long she is now. That witness testifies she is 30 feet long, and that is just the estimate I made of her length.

Q. But independent of that you don't know how long she was?     A. No, I never measured her.

Q. And you don't know how wide she is?

A. No, not exactly.

Q. You don't know how high she stood above the water; that is, the top of her pilot-house?

A. Not by measurement; she is a very low boat; she is a small boat.

Q. Do you know whether she stood higher than the barge, that is, higher than the deck of the barge above

(Testimony of E. S. Lee.)

the water?      A. No, I think not.

Q. Well, you don't know?      A. No.

**[Testimony of J. J. Banz, for Respondent.]**

J. J. BANZ, called for the respondent, sworn.

Mr. HUDSON.—Q. Where do you reside?

A. Stockton.

Q. What is your occupation?      A. Ship-joiner.

Q. Ship carpenter and joiner?      A. Yes, sir.

Q. How long have you been in that occupation?

A. Off and on for the last 15 or 16 years.

Q. Do you know the launch "Stocktonian" that has been testified about here this morning?

A. Yes, sir.

Q. Did you see her on or about the 15th of December, 1912?

A. I did, after she was disabled.      [49—33]

Q. Where did you see her?

A. I saw her on the north side of the channel opposite the navigation company's wharf.

Q. How did you come to see her at that time?

A. Mr. Prior, the manager in Stockton, telephoned to the ship-yard and wanted me to go and take a look at her saying she had been damaged a few days before by some steamer, he did not say exactly which steamer it was, at least not to my recollection.

Q. For what purpose were you requested to make an examination of her?      A. In order to repair her.

Q. Did you make an estimate as to the cost of repairing her?      A. I made an estimate; yes, sir.

Q. What condition did you find her to be in at the time you examined her?



(Testimony of J. J. Banz.)

Mr. HUTTON.—Your Honor, it would not make any difference what he said to Mr. Prior; that is calling for hearsay.

Mr. HUDSON.—I am not asking him that; I am asking him for the condition of the boat at the time he examined her.

A. I examined the boat and found after looking her over that the cost of repair would be in the neighborhood of \$100.

Q. That was your estimate?      A. Yes, sir.

Q. What damage did the boat sustain?

A. There were three windows gone. The roof of the launch was lying inside the launch, that is, a part of it, part of it was fastened to it in the bow and the aft part was lying down inside the launch. There was nothing overboard; everything was lying inside the launch. It pulled about 2 feet I guess from the top part of the house.

Cross-examination.

Mr. HUTTON.—Q. It frequently happens, when you start to repair a job, that you find you have got more work to do than you originally estimated, does it not?

A. It does sometimes, but I looked over her pretty close and found she was not leaking [50—34] and there was nothing remaining on her—on the side, that I could see.

Q. Don't you know her side was smashed in, crushed in and they had to put in some stanchions?

A. I do not.

Q. A large vessel like the "Peters" coming up



(Testimony of J. J. Banz.)

against a vessel like the "Stocktonian" is liable to strain the "Stocktonian," is it not?

A. She is liable to if she hits her in a certain place and strikes her right.

Q. These gasoline launches as a rule are built light, are they not?

A. They are built according to size.

Q. But as a rule they are built of light construction? A. Yes, sir.

Q. In tearing the house off, is it not liable to strain the hull to some extent?

A. Not if you did not strike the hull.

Q. You don't know whether the hull was struck or not, do you? A. I do not.

Q. Who do you work for?

A. I work for the navigation company.

Q. You are in its employ? A. Yes, sir.

Q. And you were in its employ at that time?

A. Yes, sir.

Q. In what capacity?

A. I have charge of the shipyard.

[Testimony of H. Lieginer, for Respondent.]

H. LIEGINER, called for the respondent, sworn.

Mr. HUDSON.—Q. Where do you reside?

A. At Stockton.

Q. What is your occupation?

A. I am Harbor Master.

Q. Harbor Master in the City of Stockton?

A. Yes, sir.

Q. Did you occupy that position on the 15th day of December, 1912? A. Yes, sir.

(Testimony of H. Lieginer.)

Q. Do you know the launch "Stocktonian"?

A. Yes, sir.

Q. Did you see that launch on the 15th day of December, 1912?      A. Yes, sir. [51—35]

Q. Where did you first see her on that day?

A. The first time I saw her was at a space that was occupied by the McCormick Company, a butcher company, 40 feet; she was there, and I hollered over to the captain and I said, "You can't use that space, that is McCormick's; you have to get out of there," and so he got out of there and came alongside of the sand barge.

Q. Did you tell anybody on the barge or on the launch, or instruct anybody on the barge or on the launch, or instruct anybody at all, to tie that launch up alongside the barge?      A. No, sir, not at all.

Cross-examination.

Mr. HUTTON.—Q. I suppose she had to be tied up—well, no questions.

The COURT.—Q. You say you saw her tied to the barge afterwards?      A. Yes, sir.

Q. Did you make any objections?      A. No, sir.

[**Testimony of E. S. Lee, for Respondent (Recalled).**]

E. S. LEE, recalled for the respondent.

Mr. HUDSON.—Q. Captain, do you know what portion of the launch "Stocktonian" was struck by the guard, the overhang of the steamer "Peters"?

A. The overhang of the guard of the "Peters" struck the cabin of the launch.

Q. It struck the cabin of the launch?

(Testimony of E. S. Lee.)

A. Yes, sir. The cabin is very light, you know; it does not take much to smash it in.

Q. Did it hit it a direct or a glancing blow?

A. As we slid by it it rubbed against it.

Cross-examination.

Mr. HUTTON.—Q. You could not see underneath the guard, could you? [52—36]

A. Certainly not, when I am up on deck.

Q. Then, as a matter of fact, you do not know of your own knowledge whether the hull of the “Peters” hit the hull of the “Stocktonian” or not, do you?

A. Yes, sir, because the guard did not go in that far; the guard of the “Peters” did not go over the launch that far.

Q. How wide is the guard? A. When I saw—

Q. (Intg.) I did not ask you that; how wide is the guard,—how far does she project from the hull of the “Peters”? A. I should say about 3 feet.

Q. The house on the launch is inside of her hull, is it not? A. Yes, sir, I guess about a foot.

Q. The guard hit the house and knocked the house over; that is correct, is it not? A. Yes.

Q. So the “Peters” was swinging over; is not that correct?

A. No, the “Peters” was not swinging over, she was going by.

Q. She was going by? A. Yes, sir.

Q. The hull of the “Stocktonian” would be underneath the guard of the “Peters”? A. Yes, sir.

Q. How do you know then, Captain, when you could not see underneath the guard, the guard was

(Testimony of E. S. Lee.)

projecting 3 feet wide, how do you know that the hull of the "Peters" did not hit the hull of the launch?

A. Because I went forward and watched it hit to see what damage it did do to the launch.

Q. What is that?

A. I could see we were going alongside pretty close to this launch and I was there to see what was going to happen when she touched.

Q. And you said here a while ago it was a very dark night?

A. We were right up alongside and I was looking directly down on the launch at that time.

Q. You could see her then all right, could you not? [53—37] A. I sure could; yes, sir.

Q. And still she was underneath your guard?

A. No, she was not underneath my guard.

Q. How could she be otherwise?

A. Because we have a guard 3 feet wide and we had only to go a foot in on the launch to hit the house.

A. If the hull of the "Peters" had hit that launch with the weight of the "Peters" she would have sunk her right then and there; she would not stand the weight of the "Peters"; she would have cracked her like an eggshell.

Q. From your own personal knowledge you do not know what damage was done to the "Stocktonian," do you?

A. Oh, yes, I do; she lay alongside the wharf for 2 or 3 weeks, right where she was hit.







(Testimony of E. S. Lee.)

Q. You did not go aboard of her, did you?

A. No, but I went on the wharf and looked at her.

Q. Are you a ship-carpenter?

A. I know something about it.

Q. Did you ever build a gasoline launch?

A. No, I never built one.

Q. You never went alongside of her to see what timbers were sprung, did you?

A. No, it was not necessary because I could examine her from the wharf.

Q. And still you are not a ship-carpenter?

A. No, I am not, but I know something about the construction of boats because I worked in our shipyard; I served a little while in our own shipyard and I know something about the construction of a boat.

Mr. HUDSON.—That is our case. [54—38]

**[Testimony of Manuel Jose, for Libelant (Recalled in Rebuttal).]**

MANUEL JOSE, called for libelant in rebuttal.

Mr. HUTTON.—Q. Could you see across the channel that night, the night of this collision?

A. Yes, sir; I could read the letters that are printed on the other side.

Q. You could see plainly over on the other side?

A. Yes, sir; whenever them lights are lit I can see across the channel on a dark night and read the letters; the letters are pretty big letters.

Q. Could you see the vessels that are lying up and down the channel? A. Yes, sir.

Q. Any of them as small as your boat?

A. Yes, sir, there were three tied abreast of her;

(Testimony of Manuel Jose.)

they stood out further than my boat did.

Q. How near to your boat?

A. 150 feet, more or less.

Q. Up or down the channel?

A. Up closer to where the "Peters" was; these launches lay all abreast, I think there were four of them. They belonged to Mr. Cross. One of them was as big as our launch, but she did not have as much power. They stuck further out in the middle of the channel than we did.

Q. Does that electric light light up the channel, generally?      A. Yes, sir.

Q. Was the hull of the "Stocktonian" strained any by this collision?      A. Yes, sir.

Cross-examination.

Mr. HUDSON.—Q. You say you could look across the channel and see the lettering on the other side?

A. Yes, sir, I could do it.

Q. When you are looking right straight across the channel?

A. Yes, sir; the letters that are printed on the warehouse. [55—39]

[Testimony of August Genecco, for Libelant (Recalled in Rebuttal).]

AUGUST GENECCO, recalled in rebuttal.

Mr. HUTTON.—Q. How light is it in that channel generally when that electric light is burning?

Mr. HUDSON.—That is objected to as immaterial, irrelevant and incompetent; it should be confined to the night in question.

(Testimony of August Genecco.)

Mr. HUTTON.—Q. Have you ever been around that channel in the night-time?

The COURT.—The captain testified that these barges lay in the shadow cast by the light, so it has been established that the lights were lit.

Mr. HUTTON.—Q. Over on your side of the channel how light is it when the electric light is burning?

A. The light burns so well, I was on it last night, and last night was considered a very dark night, and cloudy; I was there last night and we pretty near put a full load of sand on to lighten up the load on the barge.

Q. And you had the electric light? A. Yes, sir.

Q. That was done last night?

A. Yes, sir, last night, and it was a cloudy night.

The COURT.—Q. Was the barge lying in the same place?

A. The very same place, the very same berth.

Mr. HUTTON.—Q. When the barge is lying alongside the wharf, and the launch would be alongside the barge, does the barge cast any shadow over the launch—that is, so it could not be seen?

A. I don't see why the launch could not be seen as well as the barge; I don't see where it casts any shadow. The light is plain enough to see the whole works there.

Q. Which stands the highest out of the water?

A. My figures are—I could not say because the barge was about half loaded, and I really could not tell you the measurements; [56—40] I never have

(Testimony of August Genecco.)

given any measurements.

Q. Have you ever seen them alongside of one another?

A. Yes, sir, I have seen them alongside of one another, but I really could not say just how much it does stick over; I would not swear to it; it does some though.

Q. About how do they stand with respect to height out of the water?

A. There is a little difference; I could not say just about how much; there is not such a great deal of difference in the measurements; I never gave it any attention because I did not frequent it so very often.

Q. How wide is the "Stocktonian"?

A. The "Stocktonian" is 7 feet beam, just about 7 feet.

Q. And the barge?

A. 20 feet beam; 20 by 64, I believe.

Cross-examination.

Mr. HUDSON.—Q. Do you know anything about the condition of the lights or the shadows at the slip where this light was located on the night of December 15, 1912? A. No, sir.

Q. You don't know a thing about that, do you?

A. I don't know a thing about it; no, sir.

Mr. HUTTON.—That is all, your Honor.

Mr. HUDSON.—I have some authorities to present to your Honor, which I think will have some important bearing on this case. I would like to present them formally.

Mr. HUTTON.—There are just two points in this



case. It has been held universally that where a man is piloting a vessel and giving commands he is not the man to be on the lookout; they ought to have had a lookout. And secondly, it does not make any difference about where the vessel was lying; if she was not tied, if she were lying motionless, they could not run her down and then come in and say that [57—41] they could not see. Will your Honor give me two days to present the authorities?

The COURT.—You may present your authorities in two days and the other side may have two days; that will be four days in all.

[Endorsed]: Filed Dec. 27, 1913. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [58—42]

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*In the District Court of the United States in and for  
the Northern District of California, First Division.*

IN ADMIRALTY—No. 15,373.

AUGUST GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION AND IMPROVE-  
MENT CO.,

Defendant.

**Opinion.**

Upon the facts as shown I am of the opinion that libellant is entitled to judgment for \$441.80, expended

in repairing the launch "Stocktonia" and for \$180.00 for loss of the use of said launch while she was undergoing repairs.

Judgment will, therefore, be entered in favor of libellant for \$621.80, and costs.

December 3d, 1913.

M. T. DOOLING,  
Judge.

[Endorsed]: Filed Dec. 3, 1913. W. B. Maling,  
Clerk. By Francis Krull, Deputy Clerk. [59]

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*In the District of the United States, in and for the  
Northern District of California, First Division.*

No. 15,373.

AUGUST GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION AND IMPROVE-  
MENT COMPANY, a Corporation,

Defendant.

**Decree.**

This cause having been heard on the pleadings and proofs, and points and authorities having been served and filed by the respective parties, which were duly considered, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the Court that for and on account of the matters and things set forth in the pleadings, and shown by the proofs herein, that the libellant have and recover from the defendant the sum of six hundred and

twenty-one and 80/100 (\$621.80) dollars, together with interest thereon at the rate of six per cent per annum from the date of this decree, and libellant's costs to be taxed.

Dated December 15th, 1913.

M. T. DOOLING,  
Judge.

[Endorsed]: Dec. 15, 1913. Filed. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [60]

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*In the District Court of the United States for the  
Northern District of California, First Division.*

ADMIRALTY—No. 15,373.

ARTHUR GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT COMPANY, a Corporation,  
Respondent.

**Notice of Appeal.**

To Arthur Genecco, Libellant, herein, and to H. W. Hutton, Esq., Proctor for Said Libellant, and to W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, First Division:

You, and each of you, will please take notice that the California Navigation & Improvement Company, a corporation, respondent herein, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree of the District

Court of the United States, for the Northern District of California, First Division, entered in said cause on the fifteenth day of December, 1913.

Dated December 20, 1913.

METSON, DREW & MacKENZIE,  
R. G. HUDSON,

Proctors for Respondent.

Due service of a copy hereof admitted Dec. 20th, 1913.

H. W. HUTTON,  
Proctor for Libellant. [61]

[Endorsed]: Filed Dec. 20, 1913. W. B. Maling,  
Clerk. By C. W. Calbreath, Deputy Clerk. [62]

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*In the District of the United States, in and for the  
Northern District of California, First Division.*

ADMIRALTY—No. 15,373.

ARTHUR GENECCO,

Plaintiff,

vs.

CALIFORNIA NAVIGATION & IMPROVE-  
MENT COMPANY, a Corporation,

Respondent.

**Assignment of Errors.**

Comes now California Navigation & Improvement Company, a corporation, appellant herein, and assigns as error in the proceedings and decree of the District Court the following:

I.

The District Court erred in finding and deciding

that Arthur Genecco should recover for the cause of action set forth in its libel.

II.

The District Court erred in finding and deciding that it was the duty of the steamer "J. D. Peters," under the circumstances disclosed by the evidence, to keep out of the way of the launch "Stocktonia."

III.

The District Court erred in finding and deciding that the steamer "J. D. Peters" was in fault in colliding with the launch "Stocktonia," under the circumstances disclosed by the evidence.

IV.

The District Court erred in finding and deciding that the "Stocktonia" was the privileged vessel, under the circumstances disclosed by the evidence.  
[63]

V.

The District Court erred in finding and deciding that the "Stocktonia" was not in fault under the circumstances disclosed by the evidence.

VI.

The District Court erred in finding and deciding that the collision must be attributed solely to the steamer "J. D. Peters."

VII.

The District Court erred in not finding and deciding that the "Stocktonia" was guilty of negligence which contributed to the collision.

VIII.

The District Court erred in not finding and deciding that the "Stocktonia" was solely in fault for the



collision between the "Stocktonian" and the steamer "J. D. Peters," in that at the time of the collision the "Stocktonia" was not taking ordinary precautions to indicate to other vessels.

IX.

The District Court erred in not finding and deciding that, under the circumstances disclosed by the evidence, it was the duty of the "Stocktonia" to display lights indicating her position in the Stockton Channel.

X.

The District Court erred in not finding and deciding that the "Stocktonia" was solely in fault for the collision with the steamer "J. D. Peters," in that the "Stocktonia" neglected to take the proper precautions to avoid the said or any collision.

XI.

The District Court erred in awarding damages to libellant in the sum of \$621.80. [64]

XII.

The District Court erred in awarding to libellant by its decree interest upon the said sum of \$621.80 from the 15th day of December, 1912, to the date of the decree herein.

Dated San Francisco, California, January 24th, 1914.

METSON, DREW & MacKENZIE,

Proctors for Appellant.

[Endorsed]: Filed Jan. 24, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [65]

*In the District Court of the United States for the  
Northern District of California, First Division.*

ADMIRALTY—No. 15,373.

ARTHUR GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION & IMPROVEMENT  
COMPANY, a Corporation,

Respondent.

**Stipulation and Order Concerning Original Exhibits.**

IT IS HEREBY STIPULATED AND AGREED,  
by and between the proctors for the respective parties hereunto, that all the exhibits introduced in evidence at the hearing of the above-entitled cause before the above court may be omitted from the apostles on appeal in said cause and may be filed in the United States Circuit Court of Appeals for the Ninth Circuit in the original form in which the same were respectively introduced before said court.

Dated, San Francisco, Cal., Feb. 18, 1914.

METSON, DREW & MacKENZIE,

Proctors for Appellant.

H. W. HUTTON,

Proctor for Respondent.

So ordered.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Feb. 18, 1914. W. B. Maling,  
Clerk. By Lyle S. Morris, Deputy Clerk. [66]

*In the District Court of the United States for the  
Northern District of California, First Division.*

ADMIRALTY—No. 15,373.

ARTHUR GENECCO,

Libellant,

vs.

CALIFORNIA NAVIGATION & IMPROVEMENT  
COMPANY, a Corporation,

Respondent.

**Stipulation and Order Extending Time to File  
Transcript.**

IT IS HEREBY STIPULATED AND AGREED  
that an order of Court may be made herein extending  
the time for the preparation of the Apostles on  
Appeal in the above-entitled cause, to and including  
the 18th day of February, 1914.

H. W. HUTTON,

Proctors for Libellant.

METSON, DREW & MacKENZIE,

Proctors for Respondent.

Dated, January 19, 1914.

So ordered.

M. T. DOOLING,

Judge.

[Endorsed]: Filed Jan. 20, 1914, at 12 o'clock M.  
W. B. Maling, Clerk. By Francis Krull, Deputy  
Clerk. [67]

**[Certificate of Clerk U. S. District Court to  
Apostles.]**

United States of America,  
Northern District of California,—ss.

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and hereunto annexed sixty-seven (67) pages, numbered from 1 to 67, inclusive, with the accompanying exhibit, 1 in number, transmitted under separate cover, contain a full, true and correct transcript of the documents, records, etc., as the same now appear on file and of record in the Clerk's office of said District Court, in the cause entitled August Genecco vs. The California Navigation and Improvement Company, a corporation, numbered 15,373. Said Transcript is made up pursuant to and in accordance with "Praeceptum for Apostles on Appeal" (a copy of which is embodied in said Transcript), and the instructions of R. G. Hudson, Esquire, appearing on behalf of Metson, Drew and MacKenzie, Proctors for Defendants and Appellants.

I further certify that the cost of preparing and certifying to the foregoing Transcript of Appeal is the sum of Thirty-four Dollars and Forty cents (\$34.40), and that the same has been paid to me by proctors for appellants herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

this 18th day of February, A. D. 1914.

[Seal]

W. B. MALING,  
Clerk.

By Lyle S. Morris,  
Deputy Clerk. [68]

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[Endorsed]: No. 2380. United States Circuit Court of Appeals for the Ninth Circuit. The California Navigation and Improvement Company, a Corporation, Appellant, vs. August Genecco, Appellee. Apostles. Upon Appeal from the United States District Court for the Northern District of California, First Division.

Received and filed February 18, 1914.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.

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**[Certificate of Clerk U. S. District Court to Respondent's Exhibit "A."]**

*In the District Court of the United States, in and for  
the Northern District of California, First Division.*

No. 15,373.

AUGUST GENECCO,

Libellant and Appellee,  
vs.

THE CALIFORNIA NAVIGATION AND IMPROVEMENT COMPANY, a Corporation,  
Defendant and Appellant.



I, W. B. Maling, Clerk of the above-entitled court, do hereby certify that the document attached hereto, being and marked "Respt's. Exhibit No. 'A,' " and known as pencil diagram—Location of Stmr. "Walker" and "Peters," etc.—is an original exhibit introduced at the hearing of the above-entitled cause in said court, and that said exhibit is herewith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in its original form in accordance with a stipulation of counsel and order of Court, copy of which is embodied in the Transcript of Appeal herewith.

In witness whereof, I have hereunto set my hand and affixed the official seal of said District Court, this 18th day of February, A. D. 1914.

W. B. MALING,  
Clerk.

By Lyle S. Morris,  
Deputy Clerk.



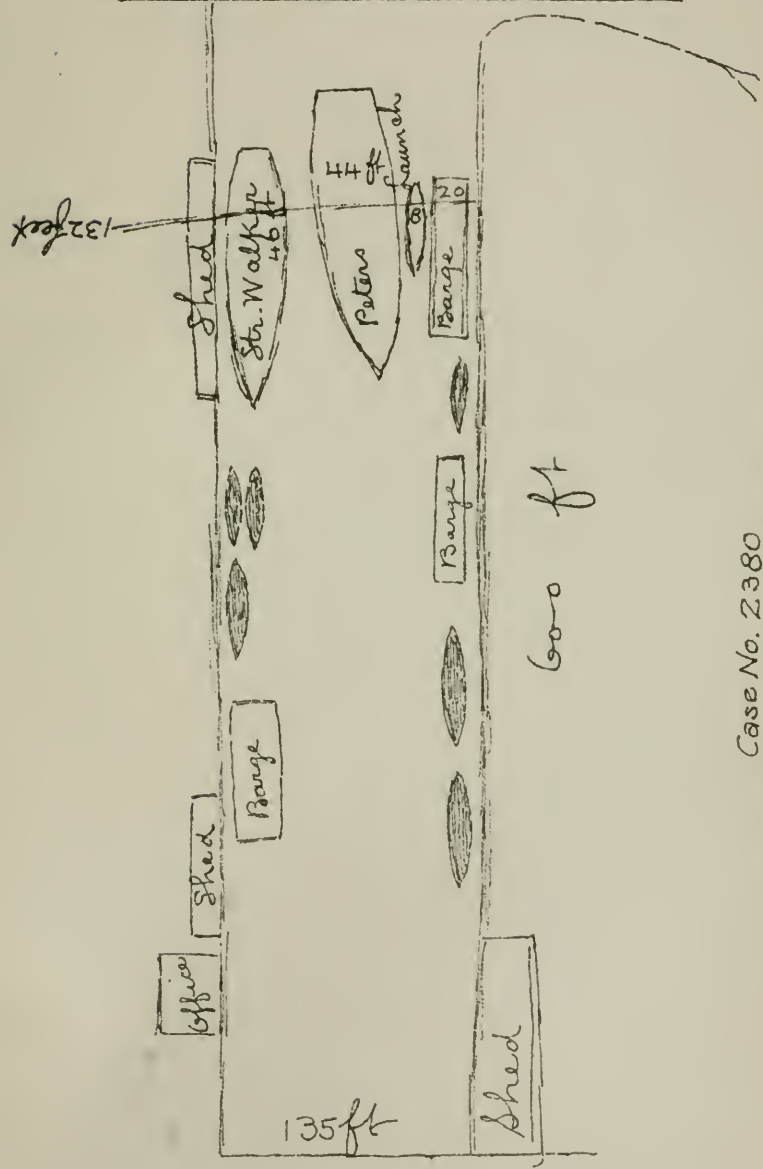
No. 15373

Genesco vs. Cal. Nav. & Imp. Co.

Respts Exhibit No. A

W. B. Maling Clerk

By Lyle B. Morris  
Deputy Clerk.



Case No. 2380  
U. S. CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
RESPONDENT'S EXHIBIT 'A'  
RECEIVED FEB 18, 1914.  
F. D. MONECKTON, Clerk.